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DEC 11 2017

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NOT FOR PUBLICATION
UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:

REYNA MARIA TAYLOR,

Alleged Debtor.

Case No. 2:17-bk-22722-RK

Chapter 7 Involuntary Case

**MEMORANDUM DECISION ON ALLEGED
DEBTOR REYNA TAYLOR'S "MOTION FOR
ORDER: (A) DISMISSING INVOLUNTARY
PETITION AGAINST REYNA TAYLOR
UNDER FEDERAL RULE OF CIVIL
PROCEDURE 12(b)(1) AND 12(b)(6), OR
FOR ABSTENTION UNDER 11 U.S.C.
305(a); AND (B) FOR MONETARY
SANCTIONS UNDER 11 U.S.C. §303(i)"**

Date: December 19, 2017

Time: 3:30 p.m.

Courtroom: 1675

Pending before the court is the motion of Alleged Debtor Reyna Maria Taylor ("Alleged Debtor") to dismiss the involuntary petition filed by Petitioning Creditor Stephen Forde ("Forde") under Federal Rules of Civil Procedure ("FRCP") 12(b)(1) and 12(b)(6), or for abstention under 11 U.S.C. § 305(a), and for monetary sanctions under 11 U.S.C. § 303(i), Electronic Case Filing Number ("ECF") 11. Steven M. Mayer of Mayer Law Group, A.P.C. represents Alleged Debtor, and Stephen Forde represents himself. Having considered the moving and opposing papers, the court determines that

1 pursuant to Local Bankruptcy Rule 9013-1(j)(3), oral argument on the motion is not
2 necessary, dispenses with it, takes the motion under submission, vacates the hearing
3 on the motion on December 19, 2017 at 3:30 p.m., and issues the following
4 memorandum decision on the motion to grant it in part and to deny it in part.

5 On October 17, 2017, Forde filed the subject involuntary Chapter 7 bankruptcy
6 petition against Alleged Debtor. This involuntary petition is one of several involuntary
7 petitions filed by Forde, following years of protracted litigation in state court between
8 Forde, Alleged Debtor, and her husband, Randall Taylor, Stephen Hawrylack
9 (“Hawrylack”), Thomas Brazil (“Brazil”), and Carol Unruh (“Unruh”). Accordingly, the
10 court recites a brief account of the history between the parties as background for this
11 decision.

12 BACKGROUND

13 It is not disputed that Forde, Alleged Debtor, Randall Taylor, Hawrylack, Brazil,
14 and Unruh invested in certain residential real properties together. Disputes over
15 management of the investment properties later arose, with the parties commencing
16 actions in state court. On September 12, 2012, the parties entered into a settlement
17 agreement in state court case number court YC064625. Stipulation to Dismiss Action
18 with the Court to Retain Jurisdiction to Enforce Settlement Pursuant to CCP § 664.6;
19 and Order thereon with Settlement Agreement attached, *Alleged Debtor’s Request for*
20 *Judicial Notice*, Exhibit 11 at 131-154. The state court entered an order on November
21 16, 2012 dismissing the case but retaining jurisdiction over enforcement of the
22 settlement agreement. *Id.* Under the terms of the settlement agreement, the parties
23 agreed that Forde was to manage the investment properties, with his duties “[to]
24 includ[e] collection of rents, payment of expenses, and maintenance.” *Alleged Debtor’s*
25 *Motion* at [Page] 11: [Lines] 1-10; *Request for Judicial Notice*, Exhibit 11 at 137, ¶ 4.
26 Although this state court case was dismissed, the case was reopened and is currently
27 pending. *Request for Judicial Notice*, Exhibit 13 at 176. Another lawsuit was
28 commenced in state court against Forde in 2015, case number BC597720, with the

1 state court eventually appointing a receiver to manage one of the investment properties.
2 *Id.* at Exhibit 14.

3 The state court disputes between the parties have since become entangled in the
4 bankruptcy court:

- 5 • **First Involuntary Bankruptcy Case (No. 2:12-bk-40561-RK):** On
6 September 7, 2012, Brazil commenced an involuntary Chapter 7
7 bankruptcy case against Alleged Debtor. On December 19, 2014, the
8 court dismissed this case.
- 9 • **Second Involuntary Bankruptcy Case (No. 2:15-bk-28932-BB):** On
10 December 15, 2015, Brazil and Forde initiated a second involuntary
11 bankruptcy case against Alleged Debtor's husband, Randall Taylor, and
12 the court dismissed this case on December 23, 2015.
- 13 • **Third Involuntary Bankruptcy Case (No. 2:15-bk-29445-BR):** On
14 December 30, 2015, Brazil and Forde filed a third involuntary bankruptcy
15 case against Randall Taylor, and the court entered an order abstaining
16 and dismissing the case, and barring the Brazil and Forde from filing
17 another involuntary petition for 180 days on April 4, 2016.
- 18 • **Fourth Involuntary Bankruptcy Case (No. 2:17-bk-13527-VZ):** On
19 March 23, 2017, Unruh filed an involuntary bankruptcy case against
20 Hawrylack, and the court dismissed this case on May 25, 2017.
- 21 • **Fifth Involuntary Bankruptcy Case (No. 2:17-bk-17023-BR):** On June
22 8, 2017, Forde filed an involuntary bankruptcy case against Randall
23 Taylor, and the court entered an order abstaining and dismissing the case
24 after finding a bona fide dispute existed.

25 Including this pending bankruptcy case, a total of six involuntary bankruptcy
26 cases have been filed among these parties.

27 DISCUSSION

28 "Section 303 [of the Bankruptcy Code, 11 U.S.C.] requires that creditors filing a

petition for involuntary bankruptcy against a debtor have claims that are not subject to a bona fide dispute.” *In re Vortex Fishing Systems, Inc.*, 277 F.3d 1057, 1064 (9th Cir. 2002). “[T]he burden is on the petitioning creditors to show that no bona fide dispute exists.” *Id.*, citing, *In re Rubin*, 769 F.2d 611, 615 (9th Cir. 1985). The Ninth Circuit has adopted an objective test when determining whether a bona fide dispute exists. *Id.* at 1064-1065. Under the objective test, “[i]f there is either a genuine issue of material fact that bears upon the debtor’s liability, or a meritorious contention as to the application of law to undisputed facts, then the petition must be dismissed.” *Id.*, citing, *In re Lough*, 57 B.R. 993, 996-997 (Bankr. E.D. Mich. 1986).

In his response to the Alleged Debtor’s motion to dismiss involuntary bankruptcy case, Forde contends that the debt owed by the Alleged Debtor to him stems from her purported share of property tax arrearages owed as a co-owner of the real property located at 22704 Maple Ave., Torrance, CA 90505 (the so-called “Maple 1 Property”) which he contributed for all the co-owners. *Petitioning Creditor’s Response* at 5-8. Forde further contends that this debt is not in bona fide dispute as Alleged Debtor is purportedly obligated as a co-owner of the property like him. *Id.* at 8. In support of this contention, Forde offers only two exhibits in evidence: (1) a letter he wrote to Alleged Debtor, Randall Taylor and Hawrylack, stating that he sent in payment of property tax arrearages on the Maple 1 Property to the loan servicer on the first trust deed, BSI, to “jolt them into cooperation” and requesting contribution from the Taylors and Hawrylack of their shares of the payment he made, Exhibit 1 to *Petitioning Creditor’s Response*, and (2) a notice of auction for Alleged Debtor’s personal residence, Exhibit 2 to *Petitioning Creditor’s Response*.

For the reasons set forth below, the court finds that Forde has not even sufficiently alleged or made a prima facie showing that that the Alleged Debtor owes him a debt that is not in bona fide dispute, let alone, meeting his burden of demonstrating that she owes him a debt for which no bona fide dispute exists.

Forde has failed to adequately allege or show that a debt exists. The only piece

1 of evidence offered by Forde to support his somewhat conclusory allegation that a debt
2 exists is Exhibit 1 to his response, his letter to the Taylors and Hawrylack dated March
3 7, 2017 in which he requests contribution payments from them. *Response of Petitioning*
4 *Creditor*, Exhibit 1, ECF 16 (the other exhibit, Exhibit 2, the notice of auction of Alleged
5 Debtor's real property does not relate to the debt alleged to him). Forde's letter alleges
6 several facts: that he contacted Bank of America regarding the property tax arrearages
7 on the Maple 1 Property, that he personally calculated the tax arrearages owed, that he
8 paid the others' share of these arrearages, and that the others, including Alleged
9 Debtor, now owe him for the contributions he made for them. But aside from Forde's
10 assertions in the letter, none of what he said is corroborated by any evidence showing
11 that Alleged Debtor and the others have any obligation to contribute. Forde provides no
12 account statements from Bank of America or other evidence establishing the existence
13 of the alleged property tax arrearages such as either property tax bills or invoices from
14 the lender if it paid the taxes for the co-owner borrowers, no evidence demonstrating he
15 paid these alleged arrearages, and no evidence how he determined the amount of the
16 alleged arrearages. Forde does not refer to, let alone provide, any evidence showing
17 that Alleged Debtor and the others have any obligation to pay these alleged arrearages,
18 such as copies of property deeds, or the alleged settlement agreement which
19 purportedly obligates them to pay him. Specifically, Forde fails to allege that on what
20 authority based on contract, statute or otherwise, he gets to unilaterally decide to pay
21 the alleged tax arrearages without the knowledge and consent of the others and then to
22 demand contributions from the others when he unilaterally makes these payments.
23 Forde's letter is only his say-so, and the allegations of a debt owed based on his letter
24 alone in his petition and response to the motion are insufficient to state a claim upon
25 which relief can be granted. For this reason alone, the petition should be dismissed
26 because Forde has not sufficiently alleged or otherwise shown that he is owed a debt
27 for purposes of bringing an involuntary bankruptcy case.

28 Even assuming that for the sake of argument that Forde has sufficiently alleged

1 or otherwise shown the existence of a debt owed to him by Alleged Debtor, the court
2 finds that Forde still has not met his burden of sufficiently alleging or otherwise showing
3 that any such debt is not in bona fide dispute. Forde asserts the debt is not in dispute
4 because Alleged Debtor agreed to pay her proportional share of property taxes in the
5 settlement, and the debt stems from property tax arrearages on the Maple 1 Property.
6 However, Forde's contention that there is no bona fide dispute only rings true if the
7 obligations of the parties under the settlement agreement is undisputed. But that is not
8 the situation here. The court notes that the judicial notice documents filed by Alleged
9 Debtor relating to the state court litigation between the parties show that Alleged Debtor
10 and Forde are litigating enforcement of the settlement agreement in state court, as the
11 settlement agreement provided the state court case would be dismissed and that case
12 has since been reopened. *See State Court Docket at Request for Judicial Notice*,
13 Exhibit 13. Moreover, Alleged Debtor contends in her Reply, ECF 18, that she
14 "vehemently denies that she owes any money to Forde, and firmly believes that when
15 the State Court cases proceed to trial the accountings will show that it is Forde who
16 ultimately owes money to the Taylors and Hawrylack." *Reply* at 6:12-15. Thus, Alleged
17 Debtor has shown in her papers that the parties have been and are currently embroiled
18 in contentious litigation regarding their investment in several properties, including the
19 Maple 1 Property, that has spanned years. Given that the parties appear to be involved
20 in pending several lawsuits, including one that appears to be directly related to the debt
21 itself, it seems the debt is in bona fide dispute. Indeed, Judge Russell made this
22 determination in the fifth involuntary petition between these parties which Forde filed
23 against Randall Taylor in Case Number 2:12-bk-17023-BR.

24 In the involuntary bankruptcy petition in the case before Judge Russell, Case
25 Number 2:12-bk-17023-BR, Forde also asserted a single debt that is same debt that he
26 asserts against Alleged Debtor in the involuntary bankruptcy petition in this case. The
27 amount and description of the debt in Case number 2:12-bk-17023-BR is the same as in
28 this case: the amount of \$31,790.21, with the nature of the petitioner's claim described

1 as “Partial amount due under Settlement Agreement.” The only difference is that this
2 prior bankruptcy case was filed against Alleged Debtor’s husband. In that case, Judge
3 Russell found that the debt was in bona fide dispute, noting that the settlement
4 agreement was being litigated in state court, and Judge Russell dismissed the prior
5 case, abstaining from exercising its jurisdiction under 11 U.S.C. § 305(a), and imposing
6 a 180 day re-filing bar entered against Forde. Based on the identical facts in this case,
7 the court sees no reason to rule differently. For these reasons, the court finds that
8 Forde has not met his burden in showing that the debt is not in bona fide dispute.

9 Finally, Forde also alleges that an order for relief should be entered against
10 Alleged Debtor because she is not paying her debts as they come due. *Petitioning*
11 *Creditor’s Response* at 10:21-28 to 11:1-24. In support, Forde provides evidence of a
12 notice of an auction of Alleged Debtor’s personal residence. *Petitioning Creditor’s*
13 *Response*, Exhibit 2. Forde contends that she is not paying her debts as they come
14 due because she has not paid property taxes on her residence, with the lender opting to
15 pay the tax arrearages to prevent the tax sale. “[T]he court shall order relief against the
16 debtor in an involuntary case only if the debtor is generally not paying such debtor’s
17 debts as such debts become due unless such debts are the subject of a bona fide
18 dispute...” 11 U.S.C. § 303(h)(1). “The Ninth Circuit has adopted a ‘totality of the
19 circumstances’ test for determining whether a debtor is generally not paying its debts
20 under 11 U.S.C. § 303(h).” *In re Vortex Fishing Systems, Inc.*, 277 F.3d at 1072
21 (citation omitted). “A finding that a debtor is generally not paying its debts ‘requires a
22 more general showing of the debtor’s financial condition and debt structure than merely
23 establishing the existence of a few unpaid debts.’ ” *Id.* (citation omitted). Forde has only
24 asserted a single debt that Alleged Debtor has purportedly not paid. As explained by
25 the Ninth Circuit, merely establishing that a few debts remain unpaid is insufficient proof
26 that a debtor is not paying their debts as they come due. Forde’s allegations and
27 showing do not meet this minimum threshold, and given the limited showing made by
28 Forde, the court is unable to make a determination as to Alleged Debtor’s general

1 financial condition by only looking at evidence of a single debt. The court further finds
2 that Forde has not met his burden of adequately alleged or otherwise showing that
3 Alleged Debtor is not paying her debts as they come due.

4 For the foregoing reasons, because Forde as the petitioning creditor has not met
5 his burden of sufficiently alleging or otherwise showing that relief is warranted on his
6 involuntary bankruptcy petition against Alleged Debtor, the court should grant the
7 motion to dismiss. However, dismissal should be with leave to amend because in
8 granting a Federal Rule of Civil Procedure 12(b)(6) motion to dismiss for failure to state
9 a claim upon which relief can be granted, courts generally must give a plaintiff or
10 petitioner at least one chance to amend absent clear showing that amendment would be
11 futile. *National Council of La Raza v. Chagavskis*, 800 F.3d 1032, 1041 (9th Cir. 2015)
12 (citation omitted). Based on this record, in this court's view, there is no clear showing
13 that amendment would be futile.

14 As to Alleged Debtor's request for sanctions, "[t]he plain language of the statute
15 presents only two prerequisites for an award of fees, costs, or damages under §
16 303(i)(1): 1) the court must have dismissed the petition on some ground other than
17 consent by the parties; and 2) the debtor must not have waived its right to recovery
18 under the statute." *Higgins v. Vortex Fishing Systems, Inc.*, 379 F.3d 701, 705 (9th Cir.
19 2004). "The bankruptcy court may not award attorneys' fees and costs prior to a
20 determination of whether dismissal of the involuntary petition is warranted." *In re Imani*
21 *Fe, LP*, BAP No. CC-12-1111 HHaMk, 2012 WL 5418983 (9th Cir. BAP
22 2012)(unpublished memorandum opinion), *citing*, 11 U.S.C. § 303(i) and *In re Corn-Pro*
23 *Cooperative, Inc.*, 317 B.R. 56, 58-59 (8th Cir. BAP 2004). "[W]hen an involuntary
24 petition is dismissed on some ground other than consent of the parties and the debtor
25 has not waived the right to recovery, an involuntary debtor's motion for attorney's fees
26 and costs under § 303(i)(1) raises a rebuttable presumption that reasonable fees and
27 costs are authorized." *Higgins v. Vortex Fishing Systems, Inc.*, 379 F.3d at 707 (citation
28 omitted).

1 Alleged Debtor's request for an award of attorneys' fees was made concurrently
2 with the motion to dismiss the involuntary case. As noted above, the statutory language
3 of 11 U.S.C. § 303(i)(1) and the case law thereon provide that the court may only award
4 attorneys' fees after the involuntary petition has been dismissed. Because the request
5 for fees and costs was not made after the request for dismissal, the court finds Alleged
6 Debtor's request to be premature at this juncture. Accordingly, the court denies Alleged
7 Debtor's request for fees and costs without prejudice.

8 **CONCLUSION**

9 For the reasons set forth above, the court finds that there is no basis to enter an
10 order for relief against Debtor, and therefore, the court hereby grants Alleged Debtor's
11 motion in part and dismisses the involuntary bankruptcy petition with leave to Petitioning
12 Creditor to file an amended complaint to address the deficiencies in the involuntary
13 bankruptcy petition discussed in this memorandum decision within 30 days of the date
14 of entry of the order on the motion, and with prejudice if the amended complaint is not
15 filed by this deadline. The court further finds that Alleged Debtor's request for attorneys'
16 fees is premature under 11 U.S.C. § 303(i)(1), and denies the motion in part as to the
17 request for sanctions without prejudice. A separate final order is being entered
18 concurrently herewith.

19 IT IS SO ORDERED.

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24 Date: December 11, 2017



Robert Kwan
United States Bankruptcy Judge